



Senate

General Assembly

File No. 165

February Session, 2008

Substitute Senate Bill No. 311

Senate, March 26, 2008

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING WELLNESS HEALTH BENEFIT PROGRAMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2008*) As used in sections 2 and 3
2 of this act:

3 (1) "Qualified wellness program" means a wellness program that is
4 certified by the Department of Public Health as provided in section 3
5 of this act.

6 (2) "Small employer" has the same meaning as provided in section
7 38a-564 of the 2008 supplement to the general statutes.

8 Sec. 2. (NEW) (*Effective July 1, 2008*) (a) There is established a tax
9 credit program for small employers that offer a qualified wellness
10 program to their employees. A small employer that elects to claim a
11 tax credit pursuant to this section shall submit to the Commissioner of
12 Revenue Services a copy of the certificate issued by the Commissioner
13 of Public Health, as provided in section 3 of this act, a copy of such

14 employer's qualified wellness program, proof of its premium
15 contributions and any additional information the Commissioner of
16 Revenue Services deems necessary, along with such employer's state
17 tax return filing.

18 (b) For income years commencing on or after January 1, 2009, there
19 shall be allowed a credit against the tax imposed under chapters 208
20 and 229 of the general statutes on a small employer's liability for either
21 tax. Such credit shall be in an amount equal to fifty per cent of the cost
22 of providing a qualified wellness program for such employer's
23 employees during the taxable year.

24 (c) A small employer qualifying under this section that is a limited
25 liability company, limited liability partnership, limited partnership or
26 S corporation, as defined in section 12-284b of the general statutes,
27 shall distribute a credit to its members, shareholders or partners and
28 such members, shareholders or partners shall be eligible to use such
29 credit against the tax imposed under chapter 229 of the general
30 statutes. The amount of the credit a member, shareholder or partner is
31 entitled to shall be equal to the tax credit as determined in subsection
32 (b) of this section, multiplied by the percentage of the distributive
33 income of the limited liability company, limited liability partnership,
34 limited partnership or S corporation to which a member, shareholder
35 or partner is entitled.

36 (d) In the event the credit provided by this section exceeds the state
37 tax liability owed by a small employer qualified under this section,
38 such employer shall be entitled to carry forward the amount of the
39 unused credit to succeeding taxable years until such credit is fully
40 taken. Each time such credit is carried forward to a succeeding taxable
41 year, it shall be reduced by the amount that was used as a credit
42 during the year immediately preceding. In no event shall a small
43 employer be entitled to a carryback or refund of any such tax credit.

44 (e) The Commissioner of Revenue Services shall adopt regulations,
45 in accordance with the provisions of chapter 54 of the general statutes,
46 to carry out the requirements of this section.

47 (f) Not later than December 31, 2011, and not later than December
48 thirty-first of each odd-numbered year thereafter, the Commissioner of
49 Revenue Services shall report to the General Assembly, in accordance
50 with the provisions of section 11-4a of the general statutes, the number
51 of taxpayers claiming and receiving the tax credit provided by this
52 section during the preceding two calendar years, any reports of abuse
53 of such credit, and other information the Commissioner of Revenue
54 Services deems necessary concerning the use and effectiveness of such
55 credit.

56 Sec. 3. (NEW) (*Effective July 1, 2008*) (a) The Commissioner of Public
57 Health shall adopt regulations, in accordance with the provisions of
58 chapter 54 of the general statutes, to establish (1) minimum standards
59 for use by a small employer in establishing a wellness program to
60 improve the health of its employees, and (2) criteria and a process for
61 certification of a small employer's wellness program that meets such
62 minimum standards as a qualified wellness program for the purposes
63 of section 2 of this act.

64 (b) The minimum standards established under subsection (a) of this
65 section shall include a requirement that a wellness program provide
66 rewards or incentives, in compliance with the Health Insurance
67 Portability Accountability Act of 1996, P.L. 104-191, for employee
68 participation in a weight loss program, smoking cessation program or
69 preventive health care. Such rewards or incentives may include, but
70 are not limited to, full or partial reimbursement of the cost of
71 participating in such programs. For the purpose of this subsection,
72 "preventive health care" shall not include services or benefits intended
73 to treat an existing illness, injury or condition.

74 (c) (1) A small employer may submit to the Commissioner of Public
75 Health for certification, in accordance with subdivision (2) of
76 subsection (a) of this section, a wellness program developed by such
77 employer.

78 (2) The Commissioner of Public Health shall review each
79 submission for certification and, based on the criteria established

80 under this section, shall make a determination of whether to certify
81 such submission as a qualified wellness program.

82 (3) If a wellness program is certified by the Commissioner of Public
83 Health, said commissioner shall provide to the small employer a
84 certificate that reflects such wellness program is a qualified wellness
85 program for the purposes of this section.

86 Sec. 4. Section 38a-825 of the general statutes is repealed and the
87 following is substituted in lieu thereof (*Effective January 1, 2009*):

88 (a) No insurance company doing business in this state, or attorney,
89 producer or any other person shall pay or allow, or offer to pay or
90 allow, as inducement to insurance, any rebate of premium payable on
91 the policy, or any special favor or advantage in the dividends or other
92 benefits to accrue thereon, or any valuable consideration or
93 inducement not specified in the policy of insurance. No person shall
94 receive or accept from any company, or attorney, producer or any
95 other person, as inducement to insurance, any such rebate of premium
96 payable on the policy, or any special favor or advantage in the
97 dividends or other benefit to accrue thereon, or any valuable
98 consideration or inducement not specified in the policy of insurance.
99 No person shall be excused from testifying or from producing any
100 books, papers, contracts, agreements or documents, at the trial of any
101 other person charged with the violation of any provision of this section
102 or of section 38a-446, on the ground that such testimony or evidence
103 may tend to incriminate him, but no person shall be prosecuted for any
104 act concerning which he is compelled to so testify or produce
105 documentary or other evidence, except for perjury committed in so
106 testifying.

107 (b) Notwithstanding subsection (a) of this section, an insurer, health
108 care center, hospital and medical service corporation or other entity
109 that delivers, issues for delivery, renews, amends or continues in this
110 state any accident or health insurance policy shall not be prohibited
111 from providing to a health insurance plan participant, enrollee or
112 certificate holder, as part of an overall plan to promote exercise and

113 wellness, full or partial reimbursement of membership dues paid by
114 such plan participant, enrollee or certificate holder to a health or
115 athletic club, health spa or gym.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2008</i>	New section
Sec. 2	<i>July 1, 2008</i>	New section
Sec. 3	<i>July 1, 2008</i>	New section
Sec. 4	<i>January 1, 2009</i>	38a-825

INS *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Public Health, Dept.	GF - Cost	None	40,100
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	None	9,442
Department of Revenue Services	GF - Revenue Loss	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

Adoption of regulations concerning certification of wellness programs can be accomplished within the Department of Public Health's (DPH's) normally budgeted resources. It should be noted that their promulgation would not be expected before FY 10.

FY 10 costs of approximately \$40,100 would be incurred by the DPH, to reflect three-quarter year implementation of the certification program. This reflects the hiring of one Health Program Assistant needed to review submissions, determine compliance with minimum standards and issue certificates as well as associated Other Expenses and one-time Equipment costs. The annualized DPH cost associated with this staffing expansion would be \$52,950 in FY 11.

Additional fringe benefits costs (\$9,442 in FY 10; \$29,872 in subsequent years) would also be incurred.

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The first year fringe benefit costs for new positions do not include pension costs. The estimated first year fringe benefit rate as a percentage of payroll is 25.36%. The state's pension contribution is based upon the prior year's certification by the actuary for the State

The bill will result in a potentially significant General Fund revenue loss to the Corporation Business Tax and the Income Tax once DPH implements the certification program. The revenue loss will depend on the number of small businesses, those under 50 employees, which decide to take part in the program and receive certification by DPH. Currently there are over 67,000 businesses in Connecticut that qualify as a “small business” for the credit.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation. The revenue loss indicated above is likely to grow as more small businesses take advantage of the tax credit.

Employees Retirement System (SERS). The SERS fringe benefit rate is 33.27%, which when combined with the rate for non-pension fringe benefits totals 58.63%.

OLR Bill Analysis**sSB 311*****AN ACT CONCERNING WELLNESS HEALTH BENEFIT PROGRAMS.*****SUMMARY:**

For income years beginning January 1, 2009, this bill creates a tax credit for small employers that offer their employees a qualified wellness program. The credit is against their corporation business and income tax liability and equal to 50% of what it cost to provide the program during the tax year. (A small employer is a business with 50 or fewer employees, including a sole proprietor.)

The bill specifies that the tax credit is nonrefundable (i.e., a taxpayer cannot receive a refund for any credit amount that exceeds taxes owed). But if an employer's tax credit is more than its taxes owed, it may carry forward any used credit to future tax years. For limited liability companies, partnerships, and S corporations, the bill requires the credit to pass through to the owners for their personal income tax purposes.

The bill defines a "qualified wellness program" as a program the Department of Health (DPH) certifies. It requires DPH to (1) adopt regulations establishing minimum wellness program standards and certification criteria and procedures and (2) review small employers' applications for certification and, for those it finds qualified, issue certificates to the employers.

In order to claim the credit, the bill requires a small employer to submit to the Department of Revenue Service (DRS) with its tax return a copy of its wellness program and DPH certificate, proof of premium contributions, and other information DRS finds necessary.

It requires DRS to (1) adopt regulations implementing the credit and (2) give the legislature a report every two years, beginning December 31, 2011, with the number of employers claiming and receiving the credit and any reported abuse of it.

It also permits insurers and other entities delivering, issuing, renewing, amending, or continuing accident or health insurance policies in Connecticut to reimburse all or part of an insured person's gym, athletic club, or health spa membership dues. It does this by exempting such a reimbursement from the law that prohibits rebates and inducements.

EFFECTIVE DATE: July 1, 2008, but the rebate law exemption is effective January 1, 2009.

WELLNESS PROGRAM STANDARDS

Under the bill, DPH's minimum wellness program standards must include rewards or incentives for people participating in (1) weight loss or smoking cessation programs or (2) preventive health care. The bill specifies that "preventive health care" excludes services or benefits intended to treat an existing illness, injury, or condition.

The bill (1) requires rewards and incentives to comply with the federal Health Insurance Portability and Accountability Act's (HIPAA) nondiscrimination requirements and (2) permits full or partial reimbursement of program participation costs.

BACKGROUND

Federal Law for Wellness Programs

HIPAA prohibits discrimination based on health status. Related U.S. Department of Labor (DOL) rules prohibit a wellness program from offering participants a reward if a person has to attain some health status in order to receive it. A program can encourage healthy habits through an incentive, such as program cost reimbursement, but reimbursement cannot be conditioned on a person actually changing habits.

According to DOL, an employer's wellness program complies with federal nondiscrimination requirements if it is open to all similarly situated individuals and, if a reward is offered, it is not conditioned on a person satisfying a health factor-related standard, unless the program meets the following five requirements:

1. a premium differential that does not exceed 20% of the total cost of employee-only coverage (or 20% of the cost of coverage if dependents can participate in the program);
2. the program is reasonably designed to promote health and prevent disease;
3. people eligible for the program have an opportunity to qualify for the reward at least once a year;
4. the program, to accommodate people for whom it is unreasonably difficult to quit using tobacco products because of an addiction, provides a reasonable alternative standard (such as a discount if the person attends educational classes or tries a nicotine patch); and
5. plan material describing premium differential also describes the reasonable alternative standard available to qualify for the lower premium.

Related Bills

sSB 312, which the Insurance and Real Estate Committee reported, allows a taxpayer to deduct from Connecticut adjusted gross income for state income tax purposes certain amounts paid for health and long-term care insurance premiums and medical expenses.

HB 5728, which the Public Health Committee reported, creates a tax credit for businesses with on-site health care clinics.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/06/2008)